

In the previous response to restriction requirement filed by Applicant on October 23, 2007, Applicant explained each of claims 1-16, 18, 19, 21-34, and 39-44 read on the embodiments of Figures 2 and 5, and further asserted that each of claims 1-16, 18, 19, 21-34, and 39-44 read on Figure 3. Therefore, Applicant asserted, and continues to assert, that each of the foregoing claims are generic as to the proffered species.

Applicant further noted that the table set forth in Figure 3 (Species I) is expressly described as **“depicting how 255 shades of gray can be generated using the method illustrated in FIGURE 2,”** (Species II) paragraph 0029 (emphasis added). Accordingly, it is not understood how the different species recite mutually exclusive characteristics of such species when the Examiner’s proffered species are expressly taught to be used together. Office Action at page 2.

Although the Examiner asserts that Species I adjusts the values of gray scale through various adjustments to drive settings whereas Species II performs a calculation by extraction and division to arrive upon a new gray scale adjustment value to support a conclusion that the species are independent and distinct, this assertion is not determinative to a proper restriction. Embodiments of Species I clearly adjust the values of gray by performing a calculation by extraction and division, *see* paragraph 0029. Likewise, embodiments of Species II clearly use calculation by extraction and division to adjust the value of gray scale through various adjustments to drive settings, *see* paragraphs 0023 - 0024 and claim 27. Clearly the proffered species are not mutually exclusive and thus the requirement to elect one of the identified species is improper. Office Action pg. 2.

Applicant notes that “if the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.” MPEP 803 (emphasis added). Examiner asserts that the species are mutually exclusive, which creates a burden in examination. However, as shown above, the proffered species are expressly taught to be used together.

Moreover, even if the proffered species were mutually exclusive, Applicant fails to see how the search and examination of all the claims in the present application creates a “serious burden” on the Examiner in light of the fact that the claims have already been examined multiple times during the pendency of this application. Examiner asserts that the species require a different field of search. However, Examiner has already completed the search, so this is a moot point.

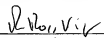
Further, Examiner asserts that different non-prior art issues are likely to raise under 35 U.S.C. §101 and 35 U.S.C. §112. However, this has already proven to not be the case in the present application. Moreover, Even if there were separate §101 and §112 raised, this is common between claims of subject matter that would not be amenable to a restriction requirement. As such, not only is there nothing that gives rise to a “serious burden” as required by MPEP 803, there is no extra burden in examining all the claims of the present application. Accordingly, Applicant respectfully submits that the asserted restriction requirement is improper.

Conclusion

Applicant believes no fee is due with this Response to Restriction Requirement. However, if any additional fee is due, or at any time during the pendency of this application, please charge any additional fees required or credit any overpayment to Deposit Account No. 06-2380, under Order No. 65744/P021US/10404749, from which the undersigned is authorized to draw.

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Respectfully submitted,

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